S.B. Civil Misc Appeal No. 786/2004

United India Insurance Company Ltd.

Vs.

Smt. Shyam Kanwar & Ors.

DATE OF ORDER : - 22.7.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr.Manoj Bhandari, for the appellant.

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Heard learned counsel for the appellant.

This appeal is against the award dated 6.12.2003 passed by the Motor Accident Claims Tribunal, Pali in MACT Case No.89/2002. The tribunal allowed the claim petition of the claimants under Section 163A of the Motor Vehicles Act, 1968 and awarded compensation of total Rs.3,80,333/- with interest @ 9% per annum to the claimants dependent and legal heirs of the deceased Bheem Singh, who died in the accident occurred on 6th May, 2002. Bheem Singh himself was driver of the Bus No.RJ22/P-0175. The tribunal held that claimants proved the income of the deceased Rs.3,000/- per month as there is no evidence in rebuttal. The tribunal also held that deceased was of the age of 43 years for which the tribunal relied upon Ex.A/1 driving licence.

Learned counsel for the appellant vehemently submitted that as per the sub-section (2) of Section 163A, the claimants were given exemption to plead and establish the wrongful act or neglect or default of the owner of the vehicle, but this does not mean that claimants are not required to plead and prove the rash and negligent driving

or wrongful act or neglect of the driver of the vehicle. It is also submitted that in this case, the deceased himself was driver of the vehicle, therefore, the claim petition should have been dismissed by the tribunal. Learned counsel for the appellant also submitted that the tribunal wrongly arrived at a decision about the age of the deceased Bheem Singh.

I gave thoughtful consideration to the submission of the learned counsel for the appellant and I do not find any force in the submission of learned counsel for the appellant. Sub-Section (2) of Section 163 A is quoted as under: -

> **"163A -Special provisions as to payment of compensation on structured formula basis.**
>
> (1) ....
>
> (2)In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) ...."

The word "any other person" in sub-section (2) of Section 163A has been used in its widest form so that the claimants without pleading negligence or wrongful act of any person including the driver of the vehicle, may get the compensation. In view of the above, the claimants were not at all required to plead and prove the wrongful act or

neglect of the driver of the vehicle involved in the cases falling under Section 163A. The Motor Vehicle Act, 1988 itself contains the provisions giving right to the claimants to claim compensation against even those persons who were not at fault in the accident. If Section 163A is read in consonance with the scheme of the Act then it certainly means that the intention of the legislature was to exclude the need of pleading and proving the wrongful act and neglect of the owner of the vehicle and including that of driver involved in the accident.

So far as question of age of the deceased is concerned, the tribunal very rightly relied upon the documentary evidence and said document cannot be said to be a concocted document. In view of that trustworthy document Ex.A/1 the finding is in accordance with law based on the reliable piece of documentary evidence, hence, there is no illegality committed by the tribunal in holding that deceased was of the age of 43 years at the time of death in the accident.

In view of the above and in the facts of this case that the amount of Rs.3,80,333/- only has been awarded to the claimants, I do not find any reason for interference in the award passed by the court below.

Hence, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

c.p.goyal/-